

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION SIX**

PENNSYLVANIA LIME, INC.<sup>1</sup>

Employer

and

LABORERS' INTERNATIONAL UNION OF  
NORTH AMERICA, LOCAL 471, AFL-CIO<sup>2</sup>

**Case 6-RC-11738**

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before David L. Shepley, a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to the undersigned Acting Regional Director.<sup>3</sup>

Upon the entire record<sup>4</sup> in this case, the Acting Regional Director finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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<sup>1</sup> The name of the Employer appears as amended at the hearing.

<sup>2</sup> The name of the Union appears as amended at the hearing.

<sup>3</sup> Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by November 17, 1999.

<sup>4</sup> The Employer and the Petitioner filed timely briefs in this matter which have been duly considered by the undersigned.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(l) and Section 2(6) and (7) of the Act.

As amended at the hearing, the Petitioner seeks to represent a unit consisting of all full-time and regular part-time production and maintenance employees, including lab technicians, drivers and equipment operators employed by the Employer at its Annville, Pennsylvania facility; excluding all weigh masters, office clerical employees, guards, professional employees and supervisors as defined in the Act. While the parties are otherwise in agreement as to both the scope and composition of the unit, the Employer, contrary to the Petitioner, contends that the temporary team leaders are supervisors within the mean of Section 2(11) of the Act, and therefore must be excluded from the unit sought herein. There are approximately 100 employees in the petitioned-for unit, which number includes the eleven temporary team leaders whose status is in dispute.<sup>5</sup> There is no history of collective bargaining for any of the employees involved herein.

The Employer, a Delaware corporation with its headquarters and a facility in Annville, Pennsylvania, (herein the facility) is engaged in the operation of a limestone quarry and the manufacturing of lime. The facility consists of a 1000 acre site, of which one-half to two-thirds is an actively working area. The site contains a quarry, which is the limestone producing area, a kiln area and plants for the crushing, processing and cleaning of the stone. The quarry produces approximately three to four million tons of limestone annually. The bulk of the quarry

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<sup>5</sup> At the hearing the Parties stipulated, and I find, that permanent team leaders Keith Lambert, Mike Demler, James Viscuillo, Ronald Lentz and Terry Ream are supervisors within the meaning of Section 2(11) of the Act, inasmuch as these individuals responsibly direct other employees using independent judgment.

operation is involved in the production of dolomitic stone, which is processed on site, and shipped by truck or rail to clients in several different states. About 800,000 to 900,000 tons of high calcium stone is also produced, which is processed into kiln feed for an in-house customer. The maintenance department supports the quarrying and kiln operations. In addition, the Employer maintains a hydrate plant/shipping/deposits operation, which is primarily involved in the loading, unloading, and handling of rail cars, and running the scales.

The quarry is operated about ten and one-half months a year, on a three shift per day schedule. The day shift is primarily involved in drilling and blasting, which work has been contracted out for over two years. Employed in the quarry are the front end loader operators (production loader operators), truck drivers, pit drivers, equipment operators, dozer operators and grader operators. The production loader operators move the stone into trucks. The afternoon and night shift employees haul the material on trucks from the quarry to the primary crusher, where it is processed the first time. The stone then goes to the secondary crushing and screening plant, which consists of additional large crushers, screens, conveyor belts, chutes and gates, which crush the rock into smaller sizes. From the secondary plant, if the stone is high calcium limestone, about 45 percent of it goes into a stockpile, which is directly fed into a kiln. The rest goes into a surge pile, which is used to feed the final plant. The dolomitic stone primarily goes into the surge pile that feeds the final plant, and a small portion of that goes to what is called the center flux plant to be kept out as its own product. A conveyor belt brings the stone from the secondary crusher to the stockpile. The final plant then processes stone through a system of screens and a water system used to clean and size the stone for the customers. This plant also takes stone and sizes it into four main sizes called fractions, which are transported by conveyor belts into bins, to be later blended back together into products as specified by the customers.

When the stone leaves the final plant, it goes up conveyor belts to a stockpile for use in the Lime Kiln. The dolomitic stone goes down to a series of stockpiles from the final plant to the different processing areas, depending on its intended use for reblending or for customer

specifications. Conveyor belts and another water system are used to transport and clean the stone from the final plant to the stockpiles. The facility has five kilns, which heat the stone to very high temperatures, while blowing finely ground coal into the discharge end of the kiln. The stone goes through the kiln until a chemical reaction is achieved leaving lime as the end product. The kilns operate 365 days per year, 24 hours per day. From the kilns the products go to receiving storage bins, and eventually are sent out on rail cars.

The facility is under the overall supervision of Carroll W. Laufmann, Vice President of Operations. Reporting to Laufmann are Dino Faiola, Stone Plant Manager, and Michael Taylor, Maintenance Manager. Reporting to Faiola are a Quarry Superintendent (currently unnamed), and Rick O'Neal and Dennis Boehmer, Processing Supervisors. Reporting to Taylor are Mobile Equipment Supervisor Gene Graham, Electrical Supervisor Keith Lambert, and Stationary Equipment Supervisors Gene Fernsler, Jim Shaffer and Steve Roof. On a separate management level, but apparently reporting to Laufmann, are Hydrate Plant/Shipping/Depots Manager Robert Weller, and Kiln Manager, Jeff Jacoby. Reporting to Weller are Rail Supervisor Nick Faiola, and Hydrate Supervisor Warren Klinefelter. Reporting to Kiln Manager Jacoby are Operations Supervisors Ron Popp, Jr., Raphael Arnick, Greg Dall and Bob Micozzi.<sup>6</sup>

At issue herein are eleven temporary team leaders. These include millwrights, or stationary equipment mechanics Jake Light, Deacon Kinsey, Randy Brewer, Ken Wanamaker, Dean Richards, Brad Rhoads and Scott Minnich; mobile equipment mechanics Frank Auman and John Leffew; and Jed Nye and Genevieve Lehman, operators in the hydrate plant/shipping/depots area. As previously noted, the Employer maintains, contrary to the Petitioner, that these eleven employees are supervisors within the meaning of Section 2(11) of the Act.

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<sup>6</sup> The Employer has a separate site, called the Hanover Operations, at which supervisors Andy Meckley and Ken Kauffman are employed. The Hanover operations are not at issue in the instant proceedings. At the hearing the parties stipulated, and I find, that all of the individuals identified in the above paragraph are supervisors within the meaning of Section 2(11) of the Act, inasmuch as they have the authority to responsibly direct other employees using independent judgment.

A job description for team leaders exists which lists a variety of essential duties and responsibilities for the team leaders, including the responsibility to plan, assign and direct work, appraise performance, reward and discipline employees and address complaints and resolve problems. The record reveals that this job description has never been signed or approved by any management personnel. Further, the record reflects that the document was essentially pulled from an “off the shelf” software system used to develop job descriptions in a standard format. There was no evidence that temporary team leaders have been shown the document, or told to adhere to its contents.<sup>7</sup>

#### Stationary Equipment Maintenance Department Temporary Team Leaders

With respect to the stationary equipment maintenance department, the record reflects that the Employer employs approximately 15 millwrights, or mechanics, and three lubricators, who work on a seven day per week, three shift per day operation. They are responsible for maintenance of all stationary mechanical equipment on site. These mechanics report to maintenance supervisors Gene Fernsler, Jim Shaffer and Steve Roof, and to Maintenance Manager Mike Taylor. There is one supervisor on duty five days per week, or 15 shifts, while on weekends one of seven temporary team leaders functions as the supervisor for each shift. Maintenance Manager Mike Taylor is available at all times either by being on site, or via cell phone. A supervisor is on call at all times with a beeper. Temporary team leaders receive a higher rate of pay while serving as the team leader. In the stationary equipment area, the temporary team leaders receive approximately one dollar per hour premium pay for the time they perform temporary team leader functions. The temporary team leaders are responsible for directing the work of the crew for which they are serving as leader. In this respect, the record reveals that a shift generally consists of three to five mechanics. With respect to day to day

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<sup>7</sup> As the record establishes that the team leader job description has not been approved by management and that temporary team leaders have not been apprised of the job description and its contents, I do not rely on this document with respect to the resolution of the supervisory issues presented herein. Rather, in this regard, I rely on record evidence of the actual duties and exercise of authority by the temporary team leaders.

operations, supervisors on outgoing shifts inform the supervisors on the incoming shifts of the work that is currently being performed. In addition, work orders are received by the incoming supervisor. Work orders are prepared by production department personnel, and request maintenance on particular equipment in a particular production department. The work orders then go to the Maintenance Supervisor or temporary team leader, who distributes the work.

During the course of a shift, if an unanticipated situation arises, the production department notifies the maintenance supervisor or temporary team leader on duty to respond to the problem. These unanticipated calls are referred to as “fire calls”. The maintenance supervisor or temporary team leader must then assess the problem and decide whether to make the repair at that time or wait. This decision may require temporarily reassigning employees in their tasks.

Fire calls require documentation by the supervisor or temporary team leader in the form of a work order for the job performed, detailing the number of hours worked, the department for which the job was performed, the piece of equipment worked on and the parts used.

On the weekends, which is primarily when the mechanics act as temporary team leaders, the temporary team leaders receive a schedule of work to be performed, which is a combination of work orders, inspections on machines not running, and other work required. The schedules, or lists, are prepared by maintenance supervisors and are listed in priority order. The main priority would be a fire call, followed by work which cannot be done except when other equipment is shut down. The temporary team leader then coordinates the work with the production supervisor, and assigns the work based on his knowledge of an individual's skills, and the particular work which needs to be done. The team leader prioritizes based on his knowledge of the manner in which the plant functions. For example, Jake Light regularly assigns the same personnel to the lime plant for work in that area. This is done by consensus decision with the mechanics on that shift. The team leader does not tell an employee how to do a particular job. In general, the temporary team leaders are familiar enough with the plant to know which job should be done in what order.

While functioning as a temporary team leader, that employee also works as a mechanic 80 to 90 percent of the time. The other portion of his time is spend answering fire calls, and preparing required paperwork with respect to the work performed.

Temporary team leaders have the authority to make work assignments and reassignments, and to respond appropriately to emergency calls. All supervisors and temporary team leaders are required to call Maintenance Manager Mike Taylor if there is a breakdown of a major piece of equipment which will require more than two hours to repair. Temporary team leaders make their own decisions as to whether the repair will require more than two hours. Temporary team leaders have the authority to purchase only one or two specific items for repairs.

The record reveals that, in the past 12 months, there was only one instance of a temporary team leader notifying Maintenance Manager Taylor with respect to a breakdown. In that instance, a kiln conveyor belt failed and the temporary team leader made an assessment that the necessary repairs could not be made unless the kiln itself was shut down.<sup>8</sup> In addition, the record reflects that, on another occasion, temporary team leader Jake Light shut down a piece of machinery called a skip halter when it broke at the welds.<sup>9</sup>

The record reflects that on occasion a temporary team leader has attended supervisory meetings in the plant, primarily during the plant shutdown period in January and February, 1999. These meetings were to discuss problems in the plant, and to discuss things which needed to be accomplished.

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<sup>8</sup> The temporary team leader had no authority on his own to shut down the kiln. Rather, the decision to shut down the kiln was made by the production department based on the temporary team leader's report.

<sup>9</sup> The skip halter is an oscillating conveyor in the kiln which throws hot material down the conveyor. It is a primary piece of equipment in the kiln process and must be shut down when it breaks in the manner described above. Shutting down the skip halter may require a shut down of the kiln, which must be done by the production department.

If a job requires that the employees stay over into the next shift, the temporary team leader may ask the employee(s) involved if they will stay over. If the employee refuses, the team leader asks another qualified employee until there are sufficient employees to complete the job. The record does not reflect what, if any, consequences result if an employee refuses overtime work. There is no set order for requesting volunteer overtime. Team leaders have the authority to authorize overtime for a job in progress, or to begin and complete a new job. However, the decision to start and complete a new job on an overtime basis is to be made in conjunction with an oncoming supervisor and the record does not reflect any instances of team leaders authorizing the beginning and completion of a new job so as to incur overtime hours. A team leader may not require a laborer in another department to leave his position for any reason.

With respect to discipline, the record reveals that no temporary team leader has ever issued any discipline to any employee. On one occasion, temporary team leader Jake Light reported to supervisor Chip O'Neal that an acknowledged supervisor had alcohol on his breath. O'Neal then spoke with that supervisor, and the supervisor was suspended for five days. Light was not questioned with respect to the circumstances nor was he asked to write any reports on the situation.

The Employer maintains a Human Resources Department which monitors attendance, including who leaves early, punches in late, and the like. A company handbook establishes automatic penalties for tardiness, absences and no call-no shows.

The record reveals that the following stationary equipment mechanics worked the following number of hours as temporary team leaders in 1999: Deacon Kinsey--950.2; Jake Light--1,284.8; Ken Wanamaker--13.0; Randy Brewer--25.0; Brad Rhoads--12.5; Scott Minnich--12.5 and Dean Richards--18.5.



### Mobile Equipment Maintenance Department Temporary Team Leaders

With respect to the mobile equipment maintenance department, the record reflects that there are 5 mechanics in that department, including three journeymen mechanics and two lubricators. They report to Mobile Equipment Supervisor Gene Graham, and are responsible for maintenance on all mobile equipment and some diesel and gasoline stationary equipment. Graham works the day shift. On Graham's off shifts the mobile equipment operators report to the Maintenance Supervisor or the Plant Supervisor. The two temporary team leaders, Frank Auman and John Leffew, are assigned to act as temporary team leaders if Graham, on the day shift, is to be away from the facility for an extended period, if he is working on a special project and does not wish to be disturbed, or, most commonly, on Saturdays. The Saturday work for the temporary team leaders averages two weekends out of four, and is the result of Graham's decision to have more employees working on those Saturdays, in order to ease the operational burden during the next week. Upon assignment as temporary team leaders, Auman and Leffew receive approximately one dollar per hour premium pay.<sup>10</sup>

Auman has performed mechanic work for many years, having been a millwright at the Employer's facility for eight years before becoming a mobile equipment mechanic three years ago. Leffew has been a mechanic for twelve years. Auman has been a temporary team leader for three years and Leffew for two years. They were chosen for the position by Graham because of their mechanical ability, and their understanding of the Employer's overall operation and priorities.

With respect to the duties of the mobile equipment mechanic temporary team leaders, the record reveals that when Graham appoints a temporary team leader he specifically informs Leffew or Auman what special jobs need to be performed. Graham reviews the outstanding

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<sup>10</sup> The record reveals that Leffew has functioned as a temporary team leader for 658 hours since January, 1999, and that Auman has functioned as a temporary team leader for 244 hours in that time period. The record further reveals that Graham has had special projects during this period of time, and that this level of assignment of the temporary team leaders is expected to continue.

work to be done with them before he leaves, and daily work may be prioritized by the temporary team leader. The daily work consists of normal repairs to mobile equipment in the facility. Two mechanics work in the shop on the day shift, and one on the evening shift. Temporary team leaders are to confer with the supervisor to whom the equipment is assigned before initiating a repair which might cost more than \$1000.

The record reflects that all personnel, through years of experience in the mobile equipment maintenance department, understand the priorities of the mobile equipment in the plant and perform their work according to those priorities. In this respect, Graham conducts a “toolbox talk” weekly to review the priority of jobs for that week. In addition, Graham prepares a priority list of work to be done. Temporary team leaders may authorize reassignments of members of their crew to achieve the necessary work, but they do not schedule the work itself, nor the primary work assignments.

In general, the temporary team leader, while acting as such, collects reports from the various operators around the plant, does visual inspections of equipment, may establish priority lists of work to be performed, orders parts, and insures that inventory levels are maintained. The operator reports document how repairs are calculated. These are then matched to open work orders, if those exist. Team leaders also initial reports, as required by the Mine Safety Health Administration. The reports are then filed and input into a computer system to implement preventative maintenance measures.

As temporary team leaders, Leffew and Auman have responsibility for various types of paperwork. For example, employees may request to remove from the facility parts which the Employer has determined to discard. Temporary team leaders initiate the requisition forms for these scrap parts, but they do not approve the final disposition. Final approval is made by Managers Weller, Jacoby, Taylor and Dino Faiola.

Temporary team leaders have the authority to complete initial paperwork to send an employee for a post-accident drug and alcohol screen. The drug and alcohol screen is required

by the Employer in the event of an accident or injury which requires medical attention. In addition, serious damage to machinery may require the drug and alcohol screen of the employee who caused the damage. There is no evidence that either Leffew or Auman have initiated drug and alcohol screens in a situation involving damage to equipment or that they have ever completed any investigation of any accident.

With respect to tardiness and absenteeism, the record reflects that since August 23, 1999, the facility has not utilized time cards, but has switched to an electronic form of timekeeping. Therefore, it is not necessary for the temporary team leader to initial absentee or tardiness records. However, the team leader is to check with the call-in center if an employee does not come to work, to verify that the employee has called off. Discipline is eventually administered through this system, but the record does not reflect any instance of temporary team leaders administering discipline.

Temporary team leaders are permitted to allow employees to temporarily switch shifts due to an emergency or if the employee has an appointment. The record does not reflect any instances of their doing so. Temporary team leaders have the authority to authorize overtime for the completion of a job in progress, or on Saturday, if the piece is necessary for the following Monday. In finding employees to work overtime, the temporary team leader requests volunteers to perform the work. The record does not reveal whether or not discipline may be imposed if an employee refuses to work overtime. Similarly, if an employee performs a job at a higher rate of pay during a shift, a supervisor or temporary team leader must forward that information to the Payroll Department, as well as paperwork authorizing bonus pay for work over 10.5 hours in one day.

Temporary team leaders are not encouraged to attend supervisor safety meetings, although on one occasion, years ago, Auman did attend such a meeting. The temporary team leaders are encouraged, but not required, to attend production meetings which are run by Stone Plant Manager Dino Faiola three times per week.

Temporary team leaders have the authority to shut down a mobile piece of equipment due to its mechanical condition. Any employee of the facility has the authority to take a machine out of service due to safety requirements.

With respect to personnel files, the record reflects that Graham, the supervisor, may only have access to employees' personnel files when monitored by personnel from the human resources department. The record does not reflect whether the temporary team leaders have access to personnel files.

#### Hydrate Plant/Shipping/Depots Temporary Team Leaders

The hydrate plant/shipping/depots department operates under the supervision of Robert Weller. The Employer operates two rail depots, located in Felton, Delaware, and Camden, New Jersey, in addition to its stone loading operation at the facility. The temporary team leaders in this department are Jed Nye, who is directly supervised by Nick Faiola, Rail Supervisor, and Genevieve (Jenny) Lehman.

Nye is a sand depot operator. His regular job duties include working in the sand depot, which is an unloading station for sand that is brought in from out of state, and used in various processes in the plant. His job is to unload sand cars, work as a loader operator, car checker, ore loader or brakeman, on a Monday through Saturday schedule. Nye acts as the temporary team leader while Faiola is absent from work, and on Saturdays when Saturday work is scheduled. There is some seasonality to the rail department, including a lengthy shut down during the winter.

Jenny Lehman is a brakeman. Lehman reports to Faiola, and her normal work responsibilities consist of shifting of rail cars, washing cars, placing cars for shipment, separating incoming cars for loading, and loading lime cars. She directs the normal stopping, starting and travelling motions of the Locomotive Engineer. Lehman's group, which includes at least two other employees, functions together and they consult with each other in making work

decisions. Lehman only occasionally acts as a temporary team leader, and when she does, it is on Saturday.<sup>11</sup>

Lehman functioned as a temporary team leader 5.5 hours in the past year and Nye has acted in this capacity for 163.4 hours. Nye and Lehman receive premium pay of \$2.73 per hour and \$3.08 per hour, respectively, when performing temporary team leader work. That premium pay equals the temporary team leader rate for the entire plant.

As noted, the temporary team leaders in this department function in this capacity only on Saturdays, and occasionally, in the case of Nye, as a fill-in for Faiola. Faiola writes out the loading schedules and schedules employees for the Saturday work, then reviews that schedule with Nye and Lehman, to clarify any questions. The basic work on Saturday involves the loading and unloading of rail cars to transport material to and from the facility, and ensuring the proper recording of customer order numbers. On Saturdays, the temporary team leader starts with Faiola's instructions, then works with the stone loader and stone plant operators to insure that the proper product goes into the proper cars. In addition, Barbara Wanamaker, in the customer service department, prioritizes the orders through the rail depots and transmits this information to Nye or Lehman. If the expected rail cars are not there, the temporary team leaders communicate with Wanamaker or the railroad company to determine whether or when the cars will arrive. A decision may then be made as to whether to inform employees to stay and load the cars, thus incurring overtime, or to send employees home early. The record reflects a requirement for the temporary team leaders to confer with the Sales Department prior to permitting overtime to accrue, or sending people home early. Temporary team leaders have the authority to temporarily switch employees' positions. However, there is no indication in the record that they have done so. The record revealed that Robert Weller, the acknowledged supervisor in this department, thought that temporary team leaders might have the authority to

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<sup>11</sup> On these occasions, it appears that Nye is not available to act as a temporary team leader.

grant vacation days, with the consultation of the Sales Department. However, no evidence was presented that they have actually done so.

### Analysis and Conclusions

It is well established that for an individual to be found a supervisor within the meaning of Section 2(11) of the Act, the individual must be vested with more than a title and theoretical power to perform one or more of the functions enumerated in Section 2(11) of the Act. Possession of any one of the indicia of supervisory authority specified is sufficient to confer supervisory status provided that the authority is exercised with independent judgment on behalf of management and is not exercised in a routine manner. Hydro Conduit Corporation, 254 NLRB 433 (1981). However, isolated or sporadic exercise of this authority is an insufficient basis upon which to predicate a supervisory finding.<sup>12</sup>

With respect to the stationary equipment mechanics, the record reflects that the temporary team leaders lack the true supervisory authority required to find them supervisors within the meaning of the Act. Temporary team leaders work as mechanics 80 to 90 percent of the time they are team leaders. The record reveals that all of the mechanics at issue in this department have worked for the Employer for many years, and are well skilled in their respective functions. Moreover, the staffing level has been determined by upper management. Thus, the record reveals that these temporary team leaders receive prioritized work schedules from higher management personnel and assign individuals to that work based on their knowledge of the employee's work skills and capabilities after discussion of the work within the crew. Such assignment does not reflect supervisory authority, but the knowledge of a more experienced employee.

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<sup>12</sup> Section 2(11) of the Act defines a supervisor as:

"[A]ny individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

The stationary equipment maintenance department temporary team leaders are, at times, required to assess problems as they arise and decide whether to make the repair at that time, or wait. The record indicates that such decisions are made on the basis of the team leader's knowledge of the functioning of the plant and the skills of the crew members. Thus the team leader, by virtue of experience at the facility, is familiar with the entire plant operation and is able to assess a situation in that light.<sup>13</sup> Such assessments and decisions, made in conjunction with assigned work, are not indicative of supervisory status. See Ryder Truck Rental, Inc., 326 NLRB No. 149 (1998); Clark Machine Corporation, 308 NLRB 555 (1992); Quadrex Environmental Company, Inc., 308 NLRB 101 (1992). The record also reveals that the temporary team leaders may, in such circumstances, temporarily reassign employees. In these circumstances, again, the assignment and direction of work by the temporary team leader appears to be more akin to the authority of a leadman rather than indicative of true supervisory status. See Lowery Trucking Company, 200 NLRB 672 (1972).<sup>14</sup>

Temporary team leaders may request that employees stay over to finish a job, but the record reflects merely the solicitation of overtime, without authority to discipline should an employee refuse such work. Such authority has been found to lack the requisite exercise of

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<sup>13</sup> The record indicates that on two occasions the temporary team leader's actions shut down production in the plant. In this respect, I note that on both of these occasions the nature of the mechanical problem itself required a shut down of production processes. Thus, the temporary team leader's actions in this regard does not reflect the level of independent judgment required to find true supervisory authority.

<sup>14</sup> Respondent relies on Dale Service Corp., 269 NLRB 924 (1984) and Salvation Army Williams Memorial Residence, 293 NLRB 944 (1989) to support a finding of supervisory status for the temporary team leaders. I find Respondent's reliance on these cases misplaced inasmuch as the individuals at issue in those cases possessed indicia of statutory supervisory authority not present herein. Thus, in Dale Service Corp., the senior operators, *inter alia*, were at times the highest ranking personnel in the facility and, in the absence of managers, were directly responsible for the operation of the plant and the direction of the work force. There is no indication in the instant record that the temporary team leaders have authority over production personnel, or even over other team leaders in the disputed areas herein. Moreover, in the stationary equipment maintenance department, a supervisor is always available by beeper. In Salvation Army Williams Memorial Residence, *supra*, the supervisor at issue could, *inter alia*, independently call in employees when extra help was needed, and independently reprimand employees, and had done so. No evidence of the exercise of disciplinary authority has been presented in the record herein, nor have temporary team leaders been advised that they possess any disciplinary authority. Accordingly, I do not find Dale Service Corp. or Salvation Army Williams Memorial Residence controlling.

independent judgment. Ryder Truck Rental, Inc., supra. Temporary team leaders do not normally direct the actual mechanical work of any employee, although on occasion a team leader has told a worker how to perform a function. The Board has found individuals performing such functions to lack the requisite indicia of supervisory authority. Vanport Sand and Gravel, Inc., 267 NLRB 150 (1983).

Temporary team leaders in the stationary equipment maintenance department do not hire, transfer, suspend, layoff, recall, promote, discharge, reward or discipline employees or adjust their grievances. Based on the above, and the record as a whole, I find that the stationary equipment mechanics who function as temporary team leaders do not possess the requisite indicia of supervisory authority to warrant a finding that they are supervisors within the meaning of Section 2(11) of the Act. Accordingly, I shall include them in the unit found appropriate herein.<sup>15</sup>

With respect to the mobile equipment maintenance department, the record reflects that the temporary team leaders, Auman and Leffew, do not schedule work, and do not have the authority to hire, transfer, suspend, layoff, recall, promote, discharge, reward or discipline employees or adjust their grievances. The record reveals that, at most, Auman and Leffew may permit overtime for the completion of a job in progress, provided that an employee can be found to complete the work, and may reassign members of their crew to achieve the work required.

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<sup>15</sup> With respect to Jake Light, the record reveals that in the past ten months, Light worked as a temporary team leader for 1,284.8 hours, primarily in March through August, 1999. In September and October, 1999 his team leader responsibilities dropped to 12.0 and 25.0 hours respectively. The record is unclear as to the reasons for either the large number of hours in March through August, or the drop in hours later in the year. While the hours worked appear to indicate that Light spent all his working time in March through August as the temporary team leader, I find that without true supervisory authority during that period, his team leader responsibilities do not establish that he is a supervisor. Billows Electric Supply of Northfield, Inc., 311 NLRB 878 (1993).

With respect to Deacon Kinsey, the record reveals that he worked as a millwright in the lime plant, and as a temporary team leader in that department. In August, 1999, he was informed that the Employer was reducing the number of team leaders, and he was offered the position of temporary team leader in the stationary equipment area. Kinsey has refused to accept that position and has not worked any hours as a temporary team leader in September or October, 1999. Under these circumstances, it appears that Kinsey no longer functions as a temporary team leader. Thus, I find that he is clearly included in the unit found appropriate herein.



There is no indication that the temporary team leaders may require an employee to work overtime, or have done so. As noted, the Board has declined to find supervisory status in such circumstances. Ryder Truck Rental, Inc., supra.

When functioning as temporary team leaders, Auman and Leffew receive prioritized work schedules from acknowledged supervisors, and attend “toolbox talks” to review those assignments. Neither Auman nor Leffew direct the mobile equipment mechanics in their specific job performance. Moreover, Auman and Leffew must confer with an acknowledged supervisor before authorizing repairs above a predetermined amount. Temporary team leaders in this department complete paperwork related to requests for permission to remove scrap parts, send employees for drug and alcohol screens under limited circumstances, and maintain paperwork on the work completed. Under these circumstances, the Board has found that the individuals involved lacked the authority required to be considered supervisors within the meaning of the Act. Clark Machine Corporation, supra. I therefore find that the exercise of such authority as Auman and Leffew possess while functioning as temporary team leaders is routine and ministerial, and is primarily based on Auman and Leffew’s familiarity with the facility. Thus, the burden of establishing supervisory status, which rests on the party asserting that such status exists, has not been met in this case. Bowne of Houston, Inc., 280 NLRB 1222 (1986).

With respect to the number of hours that Auman and Leffew have worked as team leaders, I find that without evidence that Auman and Leffew exercise authority requiring independent judgment as specified by Section 2 (11) of the Act, Auman and Leffew’s temporary team leader responsibilities do not establish that they are supervisors within the meaning of the Act. Billows Electric Supply of Northfield, Inc., supra. Based on the above, and the record as a whole, I find that Auman and Leffew do not possess such independent judgment and authority as to warrant a finding of supervisory status. Accordingly, I shall include them in the unit found appropriate herein.

With respect to the temporary team leaders in the hydrate plant/shipping/depots department, the record reveals that the employees functioning as temporary team leaders primarily engage in the routine direction of the work of employees in their department. This direction is established in accordance with lists produced by upper management, and by prioritization of the work by other upper management officials and the Sales department, in accordance with the availability of rail cars to the facility. Work assignments are based on an individual's normal work assignment in that area of the facility and are made by the acknowledged supervisor.

With reference to the approval of overtime, or granting permission to allow employees to leave early, the record indicates that the temporary team leaders must coordinate such permission with other management officials and that such decisions would be based on the presence or absence of rail cars to be loaded. Thus, they exercise no independent judgment in this area. Moreover, the record reflects only one apparent occasion, but no documented occasions, where the temporary team leaders have granted such overtime or early dismissal. Under such circumstances, no supervisory status may be found. See Millard Refrigerated Services, Inc., 326 NLRB No. 156 (1998). Temporary team leaders have not granted vacation days, personal days or sick days, nor do they schedule employees for work. There is no indication that Nye or Lehman have hired, transferred, suspended, laid off, recalled promoted, discharged, rewarded or disciplined employees, or adjusted their grievances. While they have the authority to temporarily switch employees' positions, it does not appear that they have done so.

With respect to Nye, I note that during the past six-month period, he has worked a total of 163.4 hours as a temporary team leader. The bulk of these hours were in June and July, which is presumably the height of the shipping season. Moreover, these hours have been drastically reduced in August and September, 1999.

Accordingly, with respect to Nye and Lehman, based upon the above and the record as a whole, I find that the temporary team leaders in the hydrate plant/shipping/depots department are more closely akin to leadmen, and do not possess sufficient indicia of supervisory authority exercised with sufficient discretion and independent judgment to warrant a finding that they are supervisors within the meaning of the Act. In addition, without evidence of supervisory authority, the number of hours worked by Nye as a temporary team leader does not warrant a finding of supervisory responsibility. Billows Electric Supply of Northfield, Inc., supra. Accordingly, I shall include them in the unit found appropriate herein.

For the reasons set forth above, and based on the record as a whole, I find that the Employer has failed to meet its burden of affirmatively showing that the temporary team leaders possess supervisory authority. Therefore, I find that the temporary team leaders at issue herein are not supervisors within the meaning of the Act, and that they are appropriately included in the unit found appropriate herein.

Accordingly, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

All full-time and regular part-time production and maintenance employees, including lab technicians, drivers and equipment operators employed by the Employer at its Annville, Pennsylvania facility; excluding all weigh masters, office clerical employees and guards, professional employees and supervisors as defined in the Act.

### **DIRECTION OF ELECTION**

An election by secret ballot will be conducted by the Regional Director among the employees in the unit set forth above at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations.<sup>16</sup> Eligible to vote are

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<sup>16</sup> Pursuant to Section I03.20 of the Board's Rules and Regulations, official Notices of Election shall be posted by the Employer in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. As soon as the election arrangements are finalized, the Employer will be informed when the Notices must be posted in order to comply with the posting requirement. Failure to post the Election

those employees in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period and employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.<sup>17</sup> Those eligible shall vote whether

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Notices as required shall be grounds for setting aside the election whenever proper and timely objections are filed.

<sup>17</sup> In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc. 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that the election eligibility list, containing the full names and addresses of all eligible voters, must be filed by the Employer with the Regional Director within seven (7) days of the date of this Decision and Direction of Election. The Regional Director shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office, Room 1501, 1000 Liberty Avenue, Pittsburgh, PA 15222, on or before November 10, 1999. No extension of time to file this list may be granted, except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

or not they desire to be represented for collective bargaining by Laborers' International Union of North America, Local 471, AFL-CIO.

Dated at Pittsburgh, Pennsylvania, this 3rd day of November 1999.

/s/Stanley R. Zawatski

Stanley R. Zawatski  
Acting Regional Director, Region Six

NATIONAL LABOR RELATIONS BOARD  
Room 1501, 1000 Liberty Avenue  
Pittsburgh, PA 15222

177-8501-2000  
177-8580-1400